

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

In re Subpoena to Non-Party Lindsey O. Graham in his official capacity as United States Senator,

in the matter of:

Special Purpose Grand Jury,
Fulton County Superior Court Case No.
2022-EX-000024.

Case No. 1:22-cv-03027-LMM

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN
OPPOSITION TO UNITED STATES SENATOR LINDSEY GRAHAM'S
EXPEDITED MOTION TO QUASH**

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* *Pro hac vice application forthcoming*

Former federal prosecutors Donald B. Ayer, John Farmer, Renato Mariotti, Sarah R. Saldaña, William F. Weld, and Shan Wu respectfully move for leave to file the attached brief as *amici curiae* in opposition to Senator Graham’s motion to quash. In support of their motion, *amici* state the following:

This Court possesses the “inherent authority” to grant leave to file an *amicus* brief. *Ga. Aquarium, Inc. v. Pritzker*, 135 F. Supp. 3d 1280, 1288 (N.D. Ga 2015). The Court has recognized that leave to file an *amicus* brief is appropriate where *amici* “contribute to the court’s understanding of the matter in question” by proffering timely and useful information,” *id.* (quoting *Conservancy of Southwest Florida v. U.S. Fish and Wildlife Serv.*, No. 2:10 Civ. 106, 2010 WL 3603276 at *1 (M.D. Fla. Sept. 9, 2010), and where the *amici* “demonstrate[] a sufficient interest in [the] litigation.” *DeJulio v. Georgia*, 127 F. Supp. 2d 1274, 1285 (N.D. Ga. 2001).

Amici curiae are former federal prosecutors. They collectively have many decades of experience with subpoenas, including to public officials, and with claims of testimonial privileges under the Constitution. They also have substantial personal experience with the structure and process of law enforcement investigations—once again, including in the context of public officials. And they are represented on this brief by attorneys who include two former Counsel to the Committee on the Judiciary of the House of Representatives, both of whom have substantial experience

with issues under the Speech or Debate Clause and both of whom have published scholarly works on constitutional privileges. *Amici* seek leave to file this brief because, given their decades of public service, their personal familiarity with the law enforcement and constitutional issues at issue here, and their commitment to the integrity of our democratic system, they maintain an active interest in the proper resolution of the important questions raised by Senator Graham's pending motion.

Amici respectfully submit that their proposed amicus brief may assist the Court in its decisional process and in its evaluation of the legal issues raised by the motion to quash. Their proposed amicus brief is narrowly tailored to key issues before the Court: the substantive standard for legislative privilege under the Speech or Debate Clause, the appropriate methodology for evaluating a claim of Speech or Debate Clause privilege, the application of those standards to the subpoena here at issue (relying solely on the text of the subpoena itself, the public record, and Senator Graham's motion), and the proper remedy in the event that the motion to quash the subpoena is denied. *Amici* approach these questions with careful attention to law and prior practice, and in so doing have drawn on their own professional experience. Furthermore, granting leave would not cause any delay or prejudice to the parties.

For the foregoing reasons, *amici* respectfully request that this Court grant them leave to file the attached brief.

Dated: August 4, 2022

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that this motion has been prepared in Times New Roman, 14-point font, one of the fonts and point selections approved by the Court in LR 5.1(C).

/s/ Mary E. Wells
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Counsel for Amici Curiae

APPENDIX: LIST OF *AMICI*

The *amici* listed below join this brief as individuals; institutional affiliation is noted for informational purposes only and does not indicate endorsement by institutional employers of the positions advocated in this brief.

Donald B. Ayer, who served as Deputy Attorney General at the U.S. Department of Justice from 1989 to 1990, Principal Deputy Solicitor General of the United States from 1986 to 1989; and U.S. Attorney for the Eastern District of California from 1981 to 1986. He has argued nineteen cases in the U.S. Supreme Court.

John Farmer, who has served as an Assistant U.S. Attorney, New Jersey Attorney General, Senior Counsel to the 9/11 Commission, Dean of Rutgers Law School, and now serves as Director of the Eagleton Institute of Politics. He has also served on New Jersey's Executive Commission on Ethical Standards, Advisory Committee on Judicial Conduct, and the State Commission of Investigations.

Renato Mariotti, who served in the U.S. Attorney's Office for the Northern District of Illinois from 2007 to 2016.

Sarah R. Saldaña, who served as the U.S. Attorney for the Northern District of Texas (Dallas) from 2011 to 2014 and was appointed to the Attorney General's Advisory Committee during her tenure. Since 2004, she had served as an Assistant U.S. Attorney in the same office, both as a line prosecutor, including service as the District's Election Officer, and as Deputy Criminal Chief of the Major Fraud and Public Corruption unit. Most recently, she served as Director of U.S. Immigration and Customs Enforcement from 2014 to 2017.

William F. Weld, who served as the U.S. Attorney for Massachusetts from 1981 to 1986, as the Assistant U.S. Attorney General in charge of the Criminal Division from 1986 to 1988, and as Governor of Massachusetts from 1991 until 1997.

Shan Wu, who previously served as Counsel to Attorney General Janet Reno. As an Assistant United States Attorney in Washington, D.C., he supervised a trial section, headed a Police Corruption Task Force, and prosecuted political corruption & sexual assault cases. He was Senior Associate Independent Counsel in the investigation of former Interior Secretary Bruce Babbitt and has received numerous Department of Justice Special Achievement awards.